

EX. 3

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JARI MCPHERSON, JERALD)
SAMS, AND DANIEL MARTINEZ,)
)
 Plaintiffs,)
) CIVIL ACTION
VS.)
) NO.: 1:20-cv-01223-DAE
TEXAS DEPARTMENT OF PUBLIC)
SAFETY,)
)
 Defendant.)

REMOTE ORAL DEPOSITION OF

JARI MCPHERSON

JANUARY 18, 2023

REMOTE ORAL DEPOSITION OF JARI MCPHERSON,
produced as a witness at the instance of the
PLAINTIFFS, and duly sworn, was taken in the
above-styled and numbered cause on January 18, 2023,
from 9:41 a.m. to 3:08 p.m., via Zoom, before Vanessa
J. Theisen, CSR in and for the State of Texas,
reported by machine shorthand, pursuant to the
Federal Rules of Civil Procedure and any provisions
stated on the record or attached hereto.

<p style="text-align: right;">46</p> <p>1 Q. Did he ever reduce your salary?</p> <p>2 A. No, sir.</p> <p>3 Q. Did he ever put you on discipline?</p> <p>4 A. No, sir.</p> <p>5 Q. All right. With respect to race</p> <p>6 discrimination, how are you alleging that he</p> <p>7 discriminated against you?</p> <p>8 A. He allowed white lesser-tenured, lesser-</p> <p>9 experienced troopers to promote into 7C2, when he</p> <p>10 advised me, who was a tenured agent and had four</p> <p>11 years total of investigative experience, that I had</p> <p>12 to first go to 7C1 in -- in order to learn 7C1</p> <p>13 investigations, when white agents did not. They were</p> <p>14 allowed to go straight into 7C2.</p> <p>15 I asked to go to 7C2 when I first got</p> <p>16 here and was told that I could not because I had no</p> <p>17 capital investigative experience, but I had field and</p> <p>18 regulatory investigative experience. Those white</p> <p>19 agents had no CID investigative experience whatsoever</p> <p>20 and were able to go straight to 7C2.</p> <p>21 Q. You said "those white agents." There is, in</p> <p>22 fact, only one white agent with no experience who was</p> <p>23 assigned to 7C2, correct?</p> <p>24 A. There have been multiple white agents since</p> <p>25 that time that have been able to come into 7C2</p>	<p style="text-align: right;">48</p> <p>1 different responsibilities from the other two units,</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. But there's no pay difference between the</p> <p>5 three units, correct?</p> <p>6 A. Correct.</p> <p>7 Q. It's just different job duty assignments,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. Now, apart from you not being immediately</p> <p>11 placed in Unit 7C2, are you claiming anything else</p> <p>12 that Captain Koenig did that was race discrimination</p> <p>13 against you?</p> <p>14 A. Yes.</p> <p>15 Q. What?</p> <p>16 A. The whole situation regarding the vehicle.</p> <p>17 Well, I would say that was probably more so</p> <p>18 retaliation than race discrimination. But a lot of</p> <p>19 the things that he -- again, his actions, the way</p> <p>20 that he looked at me, the way that he spoke to me,</p> <p>21 the way that he did not acknowledge me. Just those</p> <p>22 -- those things were a lot of what Mark Koenig did at</p> <p>23 that time.</p> <p>24 Q. Now, I believe you testified initially that</p> <p>25 when you had initial discussions with Mark Koenig, he</p>
<p style="text-align: right;">47</p> <p>1 without going to 7C1.</p> <p>2 Q. There's not a pay difference between</p> <p>3 Unit 7C2 and 7C1, correct?</p> <p>4 A. No, sir.</p> <p>5 Q. I think the answer to my question is a</p> <p>6 little confusing. Are you saying that it is correct</p> <p>7 or not correct?</p> <p>8 A. That there is a pay difference between the</p> <p>9 unit?</p> <p>10 Q. Yes.</p> <p>11 A. No, there is no pay difference between the</p> <p>12 units.</p> <p>13 Q. So 7C1, 7C2, and 7C3, they all have the same</p> <p>14 pay, correct?</p> <p>15 A. Depending on you individually, how long you</p> <p>16 have been with the --</p> <p>17 Q. Right.</p> <p>18 A. -- department and where you are, yes, sir.</p> <p>19 Q. So in other words, depending on your tenure</p> <p>20 or maybe any merits or any other whatever -- well,</p> <p>21 strike that. Let's start over again.</p> <p>22 Unit 7C1 and Unit 7C2 have different</p> <p>23 responsibilities, correct?</p> <p>24 A. Correct.</p> <p>25 Q. And same thing with Unit 7C3, that it has</p>	<p style="text-align: right;">49</p> <p>1 had proposed a way or he had let you just drive your</p> <p>2 vehicle to your residence initially, correct?</p> <p>3 A. Correct.</p> <p>4 Q. So his initial approach in terms of how he</p> <p>5 was handling your use of the vehicle, that wasn't in</p> <p>6 any way discriminatory or retaliatory, correct?</p> <p>7 A. Say that again?</p> <p>8 Q. The way Mark Koenig initially handled your</p> <p>9 request to drive the state-issued vehicle more than</p> <p>10 50 miles, where he initially said that he would -- to</p> <p>11 -- I believe you previously testified that he would</p> <p>12 worry about it later, that that initial approach,</p> <p>13 you're not claiming that that was discriminatory or</p> <p>14 retaliatory, correct?</p> <p>15 A. Correct.</p> <p>16 Q. And then at some point he -- after there</p> <p>17 were some complaints made or it became an issue, he</p> <p>18 directed you to park it at a facility in Florence,</p> <p>19 correct?</p> <p>20 A. Incorrect.</p> <p>21 Q. Okay. How did it come about that you were</p> <p>22 directed to park the vehicle at a facility in</p> <p>23 Florence?</p> <p>24 A. Lieutenant Danny Martinez.</p> <p>25 Q. Okay. And you're not maintaining that</p>

<p style="text-align: right;">142</p> <p>1 responsibilities to do things as assigned if they 2 came up? 3 A. Depending on the job. Every -- every unit 4 had their specialty. So if it was a CSU job that 5 came up, 7C1 wouldn't do it, 7C2 would. 6 Q. But there was an exception for that during 7 the George Floyd riots, correct? 8 A. Slightly. 9 Q. So during the George Floyd riots, there was 10 a lot of activity at the Texas Capitol, correct? 11 A. Correct. 12 Q. In fact, there were riots at the -- around 13 the Texas Capitol, correct? 14 A. Correct. 15 Q. And all the units, 7C1, 7C2, and 7C3, were 16 all assigned to work those riots. Is that correct? 17 A. Not all the time, no. 18 Q. Okay. I'm not saying all the time. But at 19 various times during the riots, all members of all 20 units were required to work counter-surveillance 21 during the riots, correct? 22 A. That's correct. Yes, sir. 23 Q. But that was a unique -- now, has that 24 circumstance repeated since the George Floyd riots? 25 A. No, sir. Not until recently due to the</p>	<p style="text-align: right;">144</p> <p>1 correct? Let me -- let me rephrase that question. 2 Pretty much most everybody in Unit 7C1, 3 7C2, and 7C3 were working overtime during the George 4 Floyd riots, correct? 5 A. Some more than others, but yes. 6 Q. And is it your contention that when you were 7 in Unit 7C1 you had to work more overtime than the 8 other two units? 9 A. Yes, it felt that way. 10 Q. All right. It felt that way. Have you -- 11 do you have -- have you reviewed all the overtime 12 requests for compensation paid for the other units? 13 A. No, I have not. 14 Q. So you don't have personal knowledge of 15 whether or not you actually worked more overtime; it 16 just felt that way? 17 A. I was there, and it felt that way, yes. 18 Q. But all three units were required to work 19 overtime during the riots, correct? 20 A. I will give you the same answer. Yes, some 21 more than others. 22 Q. Okay. Now, after the riots were over, when 23 you were in Unit 7C1 were you able to return to just 24 doing investigations? 25 A. No, because around about the time that the</p>
<p style="text-align: right;">143</p> <p>1 legislative session. 2 Q. All right. So during the legislative 3 session, again, there may be some occasion where 4 members of 7C1 or 7C3 may be assigned to do 5 counter-surveillance around the Capitol, correct? 6 A. Correct. 7 Q. Now, when you were working in Unit 7C1 8 before the riots, were you handling investigations? 9 A. Yes. 10 Q. And were you working overtime? 11 A. Working overtime? 12 Q. Yeah. Did you work overtime at any point 13 during that time period? 14 A. At any point? Yes. 15 Q. All right. And did you work weekend shifts 16 at times? 17 A. During -- it depends. It depends. Yes, we 18 did at times. 19 Q. All right. So during the riots in 20 particular you were -- 21 A. Yes. 22 Q. -- working substantial overtime, correct? 23 A. Correct. 24 Q. And, in fact, pretty much everybody was in 25 your unit and the other units within Region 7,</p>	<p style="text-align: right;">145</p> <p>1 riots were over, I ended up going to 7C2. So when we 2 kind of got fully released from that -- because we 3 still carried that on just in case the riots came -- 4 came up again. So we didn't just stop immediately 5 when the last -- when we thought the last riot 6 happened. So we carried that out. So I don't -- I 7 don't -- I'm not sure, but it kind of felt like that 8 -- from what I can recall, I moved straight from 7C1 9 into 7C2. 10 Q. All right. 11 A. And that came as a result of the work that I 12 had done with Antifa and identifying a lot of the 13 suspects and subjects in the crowd. 14 Q. So while you were in 7C1 but working during 15 the riots, you did a lot of undercover work, correct? 16 A. Correct. 17 Q. And you received a lot of recognition for 18 that undercover work, correct? 19 A. Correct. 20 Q. Can you tell me what recognition you 21 received? 22 A. Most of that was just verbal. I should have 23 received an award that I just recently got, which was 24 the Regional Director's Award. 25 THE REPORTER: I'm sorry, the what?</p>

<p style="text-align: right;">146</p> <p>1 Director? Regional?</p> <p>2 THE WITNESS: Regional Director's Award.</p> <p>3 THE REPORTER: Thank you.</p> <p>4 A. I just got that earlier this month -- last</p> <p>5 month. Last month, I'm sorry. But I should have</p> <p>6 gotten one back then. But from what I understand</p> <p>7 from my chain of command, I was not put in for it.</p> <p>8 Chris Hanson, that ended up being my lieutenant, he</p> <p>9 received a Regional Director's Award that none of us</p> <p>10 knew about. So our lieutenant received one for the</p> <p>11 work that we did, but we didn't receive one -- or I</p> <p>12 didn't receive one. Uh-huh.</p> <p>13 Q. (BY MR. HARRIS) But I think you said that</p> <p>14 in recognition of your work, your undercover work,</p> <p>15 you ended up being reassigned to Unit 7C2. Is that</p> <p>16 correct?</p> <p>17 A. Correct. And my recog -- the recognition</p> <p>18 was verbal. It -- nothing in writing.</p> <p>19 Q. And --</p> <p>20 A. No -- no significant anything.</p> <p>21 Q. -- and when was that move to Unit 7C2?</p> <p>22 A. I'll give you the same answer I gave</p> <p>23 earlier. I'm not sure of the exact time frame, but</p> <p>24 it was that summer. Sometime during that summer.</p> <p>25 MR. HARRIS: All right. Why don't we go</p>	<p style="text-align: right;">148</p> <p>1 if I did and you can refresh my memory, then I'll</p> <p>2 speak on that.</p> <p>3 Q. Uh-huh. All right. With respect to</p> <p>4 Lieutenant Martinez, you initially had some</p> <p>5 complaints against him, correct?</p> <p>6 A. I had some complaints about the way he was</p> <p>7 coming at me, yes. But I later found out that that</p> <p>8 was a tribute to the way that the chain of command</p> <p>9 had painted me to him.</p> <p>10 Q. And so you initially had a negative</p> <p>11 relationship, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And then later on you two became friends?</p> <p>14 A. Correct.</p> <p>15 Q. And do you still text message with him?</p> <p>16 A. Do I text Danny? No, I speak to Danny.</p> <p>17 Q. Okay. You speak to him by phone?</p> <p>18 A. Yes.</p> <p>19 Q. And so he's currently in El Paso now,</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. And you have phone conversations?</p> <p>23 A. Yes, I spoke to Danny yesterday.</p> <p>24 Q. All right. And have you exchanged any text</p> <p>25 messages?</p>
<p style="text-align: right;">147</p> <p>1 off the record.</p> <p>2 THE REPORTER: Okay. Off the record at</p> <p>3 2:40.</p> <p>4 (Recess from 2:40 p.m. to 2:54 p.m.)</p> <p>5 THE REPORTER: Back on the record.</p> <p>6 Q. (BY MR. HARRIS) So Mr. McPherson, did</p> <p>7 Lieutenant Hanson write a recommendation for you?</p> <p>8 A. A recommendation for?</p> <p>9 Q. For promotion?</p> <p>10 A. Did he write a recommendation? That, I</p> <p>11 don't know.</p> <p>12 Q. Do you know if he ever supported you in your</p> <p>13 promotion efforts?</p> <p>14 A. No, I don't. If he did, I didn't see it.</p> <p>15 I'm not saying he was against me promoting, but I</p> <p>16 never saw anything where he promoted me for -- for</p> <p>17 promoting.</p> <p>18 Q. Did he write you a letter of recommendation?</p> <p>19 A. I've never seen it if he did.</p> <p>20 Q. All right. Did you write something in</p> <p>21 recommendation for Lieutenant Hanson?</p> <p>22 A. For recommendation?</p> <p>23 Q. Did you write some sort of recommendation or</p> <p>24 something to support him in efforts for promotion?</p> <p>25 A. That, I don't think I did either. If I --</p>	<p style="text-align: right;">149</p> <p>1 A. Recently? No, I have not text Danny in a</p> <p>2 while. The only text messages that we have is in our</p> <p>3 text thread with the attorneys.</p> <p>4 Q. Okay. We had requested your text messages</p> <p>5 with Danny Martinez.</p> <p>6 A. Uh-huh.</p> <p>7 Q. Apart from the ones that were sent to your</p> <p>8 attorney or that were exchanged with your attorney,</p> <p>9 were there were any other text exchanges between the</p> <p>10 two of you?</p> <p>11 A. Via work phone or via personal phone? I'm</p> <p>12 trying to figure out what you're talking about here.</p> <p>13 Q. Via personal phone.</p> <p>14 A. Via personal phone? We probably had some</p> <p>15 personal text messages I'm sure, yes.</p> <p>16 Q. And when was the last time you recall</p> <p>17 texting Danny personally?</p> <p>18 A. I'm not sure. I can't -- I can look and</p> <p>19 see. Do you want me to look and see?</p> <p>20 Q. Sure.</p> <p>21 A. All right. (Witness checking phone.)</p> <p>22 December 9th.</p> <p>23 Q. So that's December 9th, 2022?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And were these just text messages</p>

<p>154</p> <p>1 MR. SCHULMAN: Nothing too thrilling.</p> <p>2 We'll reserve our questions until the time of trial.</p> <p>3 THE REPORTER: Okay.</p> <p>4 MR. HARRIS: All right. We're done.</p> <p>5 (Deposition concluded at 3:08 p.m.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>156</p> <p>1 I, JARI MCPHERSON, have read the foregoing</p> <p>2 deposition and hereby affix my signature that same is</p> <p>3 true and correct, except as noted above.</p> <p>4</p> <p>5 _____</p> <p>6 JARI MCPHERSON</p> <p>7 THE STATE OF _____)</p> <p>8 COUNTY OF _____)</p> <p>9 Before me, _____, on this day</p> <p>10 personally appeared JARI MCPHERSON, known to me (or</p> <p>11 proved to me under oath or through _____)</p> <p>12 (description of identity card or other document) to</p> <p>13 be the person whose name is subscribed to the</p> <p>14 foregoing instrument and acknowledged to me that he</p> <p>15 executed the same for the purposes and consideration</p> <p>16 therein expressed.</p> <p>17</p> <p>18 Given under my hand and seal of office, this</p> <p>19 _____ day of _____, _____.</p> <p>20</p> <p>21 _____</p> <p>22 NOTARY PUBLIC IN AND FOR</p> <p>23 THE STATE OF _____</p> <p>24 My commission expires: _____</p> <p>25 _____ No Changes Made _____ Amendment Sheet(s) Attached</p>
<p>155</p> <p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS NAME: JARI MCPHERSON</p> <p>3 DATE OF DEPOSITION: JANUARY 18, 2023</p> <p>4 PAGE LINE CHANGE REASON</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>	<p>157</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE WESTERN DISTRICT OF TEXAS</p> <p>3 AUSTIN DIVISION</p> <p>4 JARI MCPHERSON, JERALD)</p> <p>5 SAMS, AND DANIEL MARTINEZ,)</p> <p>6)</p> <p>7 Plaintiffs,)</p> <p>8) CIVIL ACTION</p> <p>9 VS.)</p> <p>10) NO.: 1:20-cv-01223-DAE</p> <p>11 TEXAS DEPARTMENT OF PUBLIC)</p> <p>12 SAFETY,)</p> <p>13)</p> <p>14 Defendant.)</p> <p>15 REPORTER'S CERTIFICATION OF THE REMOTE ORAL</p> <p>16 DEPOSITION OF JARI MCPHERSON</p> <p>17 JANUARY 18, 2023</p> <p>18 I, Vanessa J. Theisen, a Certified</p> <p>19 Shorthand Reporter in and for the State of Texas,</p> <p>20 hereby certify to the following:</p> <p>21 That the witness, JARI MCPHERSON, was duly</p> <p>22 sworn by the officer and that the transcript of the</p> <p>23 oral deposition is a true record of the testimony</p> <p>24 given by the witness;</p> <p>25 That the original deposition was delivered</p> <p>to Mr. Drew Harris to obtain witness's signature.</p> <p>That a copy of this certificate was served</p> <p>on all parties and/or the witness shown herein on</p> <p>February 2, 2023.</p> <p>I further certify that pursuant to FRCP</p> <p>Rule 30(3) that the signature of the deponent:</p>

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1 XX_ was requested by the deponent or a
2 party before the completion of the deposition and
3 that the signature is to be before any notary public
4 and returned within 30 days from date of receipt of
5 the transcript.

6 If returned, the attached Changes and
7 Signature Page contains any changes and the reasons
8 therefore:

9 _____ was not requested by the deponent or
10 a party before the completion of the deposition.

11 I further certify that I am neither
12 counsel for, related to, nor employed by any of the
13 parties or attorneys in the action in which this
14 proceeding was taken, and further that I am not
15 financially or otherwise interested in the outcome of
16 the action.

17 Certified to by me on this, the 2nd day
18 of February, 2023.

19

20

VANESSA J. THEISEN, Texas CSR, RPR

21 Texas Cert No. 3238

Expiration Date: 10/31/23

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